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Environmental
Protection

California Regional Water Quality Control Board

Los Angeles Region

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Jeff Pratt, Director
Ventura County Watershed Protection District
800 S. Victoria Avenue
Ventura, CA 93009-1610

WATER QUALITY CERTIFICATION FOR PROPOSED POLE CREEK EMERGENCY SEDIMENT BASIN PROJECT (Corps' Project No. 2004-01066- AJS), POLE CREEK, CITY OF FILLMORE, VENTURA COUNTY (File No. 04- 045)

Dear Mr. Pratt:

Regional Board staff has reviewed your request on behalf of the Ventura County Watershed Protection District (District) for a Clean Water Act Section 401 Water Quality Certification for the above-referenced project. Your application was deemed complete on June 1, 2004.

In general, the Regional Board prohibits the siting of sedimentation basins or any other treatment system within waters of the State. However, the devastating fires that burned in the subject watershed in 2003 left large areas devoid of vegetative cover. The lack of vegetative cover, combined with the steep terrain present a high risk of flood and debris damage, should heavy rains occur.

The District has determined the debris basin must be designed for a 10-year storm volume in a burned watershed. Although, off-line sites (outside of waters of the State) were considered, none were capable of containing the prescribed debris volume.

Therefore, in light of the potential threat to human life and property and in consideration of the mitigation monitoring requirements within this Certification, I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003 - 0017 - DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges that have received State Water Quality Certification" which requires compliance with all conditions of this Water Quality Certification.

California Environmental Protection Agency

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Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

The Applicant shall be liable civilly for any violations of this Certification in accordance with the California Water Code. This Certification does not eliminate the Applicant's responsibility to comply with any other applicable laws, requirements and/or permits.

Should you have questions concerning this Certification action, please contact Valerie Carrillo, Lead, Section 401 Program, at (213) 576-6759.

_____[Original signed by]_____
Jonathan Bishop
Interim Executive Officer

DISTRIBUTION LIST

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ATTACHMENT A

Project Information

File No. **04-045**

1. Applicant: Ventura County Watershed Protection District
800 S. Victoria Avenue
Ventura, Ca 93009-1610
Phone: (805) 654-2040 Fax: (805) 654-3350
2. Applicant's Agent: Theresa Stevens
800 S. Victoria Avenue
Ventura, Ca 93009-1610
Phone: (805) 654-2040 Fax: (805) 654-3350
3. Project Name: Pole Creek Emergency Sediment Cleanout
4. Project Location: City of Fillmore, Ventura County

Longitude: 118° 54' 12.780"; Latitude: 34° 23' 52.476"
Range: 19 Township: 4 N Section: 29, 30
5. Type of Project: Emergency sediment removal
6. Project Description: *Purpose:*
The purpose of the proposed project is for the construction of an interim emergency debris basin and associated flood control channel modifications in response to the fires of October 2003.

The fires of October 2003 burned the majority of the 8.2 square mile watershed, resulting in the potential for increased sediment yields that could exceed the capacity of existing flood control facilities. The sediment yield from a 10-year storm is estimated to increase from 58,200 cubic yards under "pre-burn" conditions, to 163,000 cubic yards under existing conditions.

The burned watershed has caused a situation where large volumes of sediment can be moved by the creek, causing over-bank flooding which threatens homes and properties in the City of Fillmore and Highway 126. Under the existing burned conditions, currently Pole Creek is inadequately sized to control normal flows over the 50-year event. The post-fire 10-year event would cause flooding and

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structural damage to 53 mobile homes, an office and meeting hall, and six (6) businesses on the west side of Telegraph Road.

Alternatives:

Seven alternatives, including a no project alternative, various basin locations, construction of a floodwall and breaching the west levee of Pole Creek were considered. Of these, two were recommended for further study as they were both cost-effective and provided an adequate degree of flood protection and sediment capacity. The selected alternative was chosen based on problems with maintenance and groundwater associated with the rejected alternative.

The proposed project is largely confined to upland areas, disturbed floodplain terrace (outside jurisdictional areas) and improved reaches of Pole Creek. Impacts to waters of the U.S. were reduced to 2.12 acres, from the originally proposed 5.10 acres. Most of the reduction was achieved through reducing the limits of disturbance at the confluence with the Santa Clara River.

Description:

The proposed emergency basin and related facilities are designed to flow at high velocities throughout the 10-year bulked storm event. This is accomplished by providing a steepened channel section and a large sediment basin at the location where the predicted failure of the existing channel originates. The proposed emergency improvements to Pole Creek include (in upstream to downstream order):

- Reconstruction of approximately 300 linear feet (0.50 acre) of the existing concrete flood control channel extending downstream from Highway 126 to provide a steeper slope and grouted rock spillway structure into the basin;
- Excavation of a 23-acre debris basin (largely in upland areas) which would replace 0.19 acre of concrete channel and 0.19 acre of graded earthen channel;
- Regrading and widening of the downstream reach of Pole Creek (0.40 acre of existing graded earthen channel) and grading a portion of the confluence of the Santa Clara River (0.54 acre); and

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- Filling 0.30 acre of an agricultural drainage ditch within the stockpile area of material excavated to create the basin.

Since this project has been deemed as an emergency, the United States Natural Resources Conservation Service will be providing \$900,000 for the project construction costs.

The proposed project will be considered as an interim facility. The Regional Board has received an application from Griffin Homes for the Heritage Valley housing development project, which encompasses the lower reach of Pole Creek. The Heritage Valley project proposes to replace the interim basin with a permanent basin of similar size and partially overlapping the proposed interim facility. The Heritage Valley project will be considered a separate project, subject to separate permitting requirements.

The Corps of Engineers and NOAA Fisheries are currently working to address issues relating to potential fish passage through Pole Creek. This may include avoidance measures during construction and future maintenance, and/or design modifications. Although recent surveys have not found steelhead within the project area, NOAA has expressed concern regarding potential impacts and inhibiting possible future recovery efforts.

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| 7. Federal Agency/Permit: | U.S. Army Corps of Engineers
NWP No. 37 (Permit No. 2004-01066-AJS) |
| 8. Other Required Regulatory Approvals: | California Department of Fish and Game
Streambed Alteration Agreement |
| 9. California Environmental Quality Act (CEQA) Compliance: | The Lead Agency (Ventura County Watershed Protection District) has determined that the proposed project is exempt from CEQA under Statutory Exemption (Section 15269) as A “specific action necessary to prevent or mitigate an emergency.” The proposed project is specifically designed to prevent flooding associated with expected exceedance of channel capacity caused by debris flows associated with recent intensive fires in the area. The District filed a CEQA Notice of Exemption on March 31, 2004. |
| 10. Receiving Water: | Pole Creek, tributary to Santa Clara River (Hydrologic Unit No. |

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403.31)

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|--|---|
| 11. Designated Beneficial Uses: | MUN*, IND, PROC, AGR, GWR, FRSH, REC-1, REC-2, WARM, WILD, RARE, MIGR, WET

*Conditional beneficial use |
| 12. Impacted Waters of the United States: | <u>Basin & Channel</u>
Non-wetland waters (streambed): 1.82 permanent acres

<u>Agricultural Ditch</u>
Non-wetland waters (streambed): 0.30 permanent acres |
| 13. Dredge Volume: | Material pushed and removed from the streambed comprises primarily sands and gravels with some cobbles and fines. The quantity to be removed is unknown, but approximately 1,000 cubic yards (cy) per day. |
| 14. Related Projects Implemented/to be Implemented by the Applicant: | Griffin Homes will be applying for a separate Water Quality Certification in order to develop a residential housing development adjacent to Pole Creek and to replace the interim basin with a permanent basin. |
| 15. Avoidance/Minimization Activities: | <p>The Applicant has proposed to implement several Best Management Practices, including, but not limited to, the following:</p> <ul style="list-style-type: none">• Avoidance of flowing and ponded water or saturated areas.• Construction during the dry period of the year.• Biological and construction monitoring prior to and throughout construction.• Implementation of erosion control measures to prevent sedimentation in the downstream flood control channel. |

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- Seeding of the upper portion of the cut slopes with native grasses and herbaceous species above the sediment line to reduce erosion.
- Exclusionary fencing shall be installed around the impact area to prevent most animal species from re-entering the work site following initiation of construction.
- Avoid adjacent slopes that support coast live oaks and coastal sage scrub vegetation communities.

16. Required
Compensatory
Mitigation:

The Ventura County Watershed Protection District (District) has proposed to mitigate impacts to waters of the U.S. through a larger restoration program operated by Griffin Homes. The details of the mitigation plan are currently being developed by Griffin Homes and would involve a combination of restoration, enhancement and protection of approximately 127 acres along Santa Clara River, adjacent to the Griffin Homes project. Contingency measures will be required to ensure mitigation is undertaken regardless of whether the Griffin Homes project is approved and constructed.

See Attachment B Conditions of Certifications, Additional Conditions for modifications and additions to the above proposed compensatory mitigation.

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Conditions of Certification File No. 04-045

STANDARD CONDITIONS

Pursuant to §3860 of Title 23 of the California Code of Regulations (23 CCR), the following three standard conditions shall apply to this project:

1. This Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to §13330 of the California Water Code and Article 6 (commencing with 23 CCR §3867).
2. This Certification action is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent Certification application was filed pursuant to 23 CCR Subsection 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. Certification is conditioned upon total payment of any fee required pursuant to 23 CCR Chapter 28 and owed by the Applicant.

ADDITIONAL CONDITIONS

Pursuant to 23 CCR §3859(a), the Applicant shall comply with the following additional conditions:

1. The Applicant shall submit to this Regional Board copies of any other final permits and agreements required for this project, including, but not limited to, the U.S. Army Corps of Engineers' Section 404 Permit and the California Department of Fish and Game's Streambed Alteration Agreement. **These documents shall be submitted prior to any discharge to waters of the State.**
2. The Applicant and all contractors employed by the Applicant shall have copies of this Certification, the approved maintenance plan, and all other regulatory approvals for this project on site at all times so they are familiar with all conditions set forth.
3. Fueling, lubrication, maintenance, operation, and storage of vehicles and equipment shall not result in a discharge or a threatened discharge to waters of the state. At no time shall the Applicant use any vehicle or equipment which leaks any substance that may impact water quality. Staging and storage areas for vehicles and equipment shall be located outside of waters of the State.

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4. No construction material, spoils, debris, or any other substances associated with this project that may adversely impact water quality standards, shall be located in a manner which may result in a discharge or a threatened discharge to waters of the state.
5. The Applicant shall implement all necessary control measures to prevent the degradation of water quality from the proposed project in order to maintain compliance with the Basin Plan. The discharge shall meet all effluent limitations and toxic and effluent standards established to comply with the applicable water quality standards and other appropriate requirements, including the provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act. This Certification does not authorize the discharge by the applicant for any other activity than specifically described in the 404 Permit.
6. The discharge shall not: a) degrade surface water communities and populations including vertebrate, invertebrate, and plant species; b) promote the breeding of mosquitoes, gnats, black flies, midges, or other pests; c) alter the color, create visual contrast with the natural appearance, nor cause aesthetically undesirable discoloration of the receiving waters; d) cause formation of sludge deposits; or e) adversely affect any designated beneficial uses.
7. The Applicant shall allow the Regional Board and its authorized representative entry to the premises, including all mitigation sites, to inspect and undertake any activity to determine compliance with this Certification, or as otherwise authorized by the California Water Code.
8. The Applicant shall not conduct any activities within waters of the State during a rainfall event, or at any period when site conditions would lead to excessive erosion. If any activities are to be held within **five (5) days** of a predicted rainfall event, the Applicant shall implement measures necessary to prevent water degradation, and shall ensure that all stabilization procedures are completed prior to the rainfall event.
9. No activities shall involve wet excavations (i.e., no excavations shall occur below the seasonal high water table). A minimum **5-foot** buffer zone shall be maintained above the existing groundwater level. If construction or groundwater dewatering is proposed or anticipated, the Applicant shall file a **Report of Waste Discharge** to this Regional Board and obtain any necessary NPDES permits/Waste Discharge Requirements prior to discharging waste. Sufficient time should be allowed to obtain any such permits (generally 180 days). If groundwater is encountered without the benefit of appropriate permits, the Applicant shall cease all activities in the areas where groundwater is present, file a Report of Waste Discharge to this Regional Board, and obtain any necessary permits prior to discharging waste.

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10. All project/maintenance activities not included in this Certification, and which may require a permit, must be reported to the Regional Board for appropriate permitting. Bank stabilization and grading, as well as any other ground disturbances, are subject to restoration and revegetation requirements, and may require additional Certification action.
11. All surface waters, including ponded waters, shall be diverted away from areas undergoing grading, construction, excavation, vegetation removal, and/or any other activity which may result in a discharge to the receiving water. If surface water diversions are anticipated, the Applicant shall develop and submit a **Surface Water Diversion Plan** to this Regional Board. The plan shall include the proposed method and duration of diversion activities, erosion and sediment controls, and a map or drawing indicating the locations of diversion and discharge points. The plan shall be submitted prior to any surface water diversions. If surface flows are present, then upstream and downstream monitoring for pH, temperature, dissolved oxygen, turbidity, and total suspended solids shall be implemented. These constituents shall be monitored on a **daily** basis during the first week of diversion activities, and then on a **weekly** basis, thereafter, until the in-stream work is complete. Results of the analyses shall be submitted to this Regional Board by the **15th** day of each subsequent sampling month. A map or drawing indicating the locations of sampling points shall be included with each submittal. Diversion activities shall not result in the degradation of beneficial uses or exceedance of water quality objectives of the receiving waters. Any such violations may result in corrective and/or enforcement actions, including increased monitoring and sample collection.
12. The Applicant shall provide COMPENSATORY MITIGATION to offset the proposed impacts to **2.12 acres** waters of the United States by restoration and/or enhancement within the Santa Clara River at a minimum **4:1** area replacement ratio (**8.48 acres**). In order to fulfill this requirement, the Ventura County Watershed Protection District shall submit a Mitigation Plan for mitigation efforts proposed by Griffin Homes. Approximately 127 acres of restoration within Santa Clara River has been proposed.
13. All open space and mitigation areas shall be placed within a conservation easement to ensure preservation in perpetuity. Documentation of proper easement placement shall be submitted to the Regional Board within one year.
14. The Applicant shall submit to this Regional Board **Annual Mitigation Monitoring Reports** by **January 1st** of each year for a minimum period of **five (5) years** after initiation of the mitigation plan. The report shall describe in detail all of the project activities performed during the previous year and all restoration and mitigation efforts; including percent survival by plant species. This report shall include as a minimum, the following documentation:
 - (a) Color photo documentation of the pre- and post-project and mitigation site conditions;

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- (b) Geographical Positioning System (GPS) coordinates in decimal-degrees format outlining the boundary of the project and mitigation areas;
 - (c) The overall status of project including a detailed schedule of work;
 - (d) Copies of all permits revised as required in Additional Condition 1;
 - (e) Water quality monitoring results for each reach (as required) compiled in an easy to interpret format;
 - (f) A certified statement of “no net loss” of wetlands associated with this project;
 - (g) Discussion of any monitoring activities and exotic plant control efforts; and
 - (h) A certified statement from the permittee or his/her representative that all conditions of this Certification have been met.
15. Subsequent maintenance activities within the subject basin, including clearing, maintenance by-hand, and/or the application of pesticides, the Applicant shall be conducted in accordance with the District’s routine maintenance program.
16. On an annual basis, the District will assess the requisite continued need for the debris basin, and will to the extent possible allow for vegetation to exist within the debris basin.
17. Application of pesticides must be supervised by a certified applicator and be in conformance with manufacturer’s specifications for use. Compounds used must be appropriate to the target species and habitat. All pesticides directed toward aquatic species must be approved by the Regional Board. Pesticide utilization shall be in accordance with State Water Resources Control Board Water Quality Order Nos. 2001-12-DWQ and 2004-0009-DWQ.
18. All applications, reports, or information submitted to the Regional Board shall be signed:
- (a) For corporations, by a principal executive officer at least of the level of vice president or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which discharge originates.
 - (b) For a partnership, by a general partner.
 - (c) For a sole proprietorship, by the proprietor.
 - (d) For a municipal, state, or other public facility, by either a principal executive officer, ranking elected official, or other duly authorized employee.

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- "I declare under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who managed the system or those directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

____ (Signature)
____ (Title)''

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reduce, eliminate and prevent recurrence of the noncompliance. The Executive Officer, or an authorized representative, may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

24. *Enforcement:*

- (a) In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Certification.
 - (b) In response to a suspected violation of any condition of this Certification, the State Water Resources Control Board (SWRCB) or Regional Water Quality Control Board (RWQCB) may require the holder of any permit or license subject to this Certification to furnish, under penalty of perjury, any technical or monitoring reports the SWRCB deems appropriate, provided that the burden, including costs, of the reports shall be a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
 - (c) In response to any violation of the conditions of this Certification, the SWRCB or RWQCB may add to or modify the conditions of this Certification as appropriate to ensure compliance.
25. This Certification shall expire **five (5) years** from date of this Certification. The Applicant may request a renewal of this Certification 180 days prior to its termination, if the project as described has not been completed. Renewals may be granted in five-year (5-year) increments, are subject to additional filing fees and will require Regional Board approval.
26. If maintenance is proposed after the completion of the **5-year** period, the District must provide an assessment of the condition, capacity, and continued need of the debris basin and determine the state of the watershed (i.e., recovery from fire impacts).